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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 15, 1999

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PUE980602

ROBERT A. WINNEY, Social  
Security No. 123-32-9127, D/B/A  
THE WATERWORKS COMPANY OF  
FRANKLIN COUNTY,  
Defendant

JUDGMENT

The Commission's Order Making Findings, Directing Refunds, and Suspending Judgment was filed in this proceeding on December 22, 1998. As set out in that Order, the Commission found that Robert A. Winney, d/b/a The Waterworks Company of Franklin County, ("Winney") had failed to apply prescribed rates and charges and had failed to make refunds ordered by the Commission. As provided by § 12.1-33 of the Code of Virginia, the Commission fined Winney \$2,500.00 for failing to comply with provisions of the Code of Virginia and to obey orders of the State Corporation Commission. Entry of judgment for this fine was suspended on condition that Winney make refunds to his customers on or before February 5, 1999.

On March 11, 1999, the Commission's Staff Motion Initiate Further Proceedings or Entry of Judgment was filed. According

to the Staff, Winney had failed to comply with the refund provisions of our Order of December 22, 1998. Winney filed a response to the Staff motion on March 18, 1999.

Upon consideration of the record developed in this proceeding, the Staff motion, and Winney's response, the Commission finds that Winney has failed to comply with the refund provisions of our Order of December 22, 1998. Our December 22 Order provided redress to customers in two situations. As previously authorized by the Commission, lot owners not connected to the water system are subject to an annual availability charge. By order of February 27, 1998, in another proceeding, the Commission reduced the availability charge and directed a refund of \$35.33 to customers. The refund was to be made by March 18, 1998, but the date was later extended to July 15, 1998, in response to Winney's pleas of financial hardship. The record made at our December 3, 1998 hearing in this proceeding established that the refund had not been made. We ordered Winney to issue refund checks by February 5, 1999, and file a report of the refunding, including the names of customer and the refund check number, by February 17, 1999. In his response to the Staff's motion, Winney conceded that he did not make the refunds as we expressly directed. He stated the bills for 1999 were credited by the

refund amount, but he provided no means of verifying or auditing this representation.

Our Order of December 22, 1998, also addressed Winney's systematic overbilling and misbilling for water service during 1998. The record made at the December 3 hearing established numerous instances of overbilling, and Winney did not appear to present testimony or documents to show otherwise. As with the availability charge refund, we directed Winney to issue by February 5, 1999, refund checks for overpayments and to file a report of payments, including refund check numbers and amount, by February 17, 1999. Winney did not file the required report with the Commission. He now contends in his response to the Staff motion that no refunds were due. Such a post-hearing claim cannot refute the evidence of improper billing made at the December 3 hearing.

The record establishes a pattern of continued, systematic violation of the Commission's orders and applicable provisions of the Code of Virginia. Allegations of financial distress, even if true, do not excuse Winney from complying with Commission's orders and applicable provisions of law. The Code of Virginia and the policies and procedures adopted by this Commission to implement these provisions of law provide avenues for securing rate relief that carefully balance the interests of consumers and the utilities. Under these circumstances, the

Commission finds that judgment for the full amount of the suspended fine should be imposed. Accordingly,

IT IS ORDERED THAT:

(1) Judgment in the amount of \$2,500.00 be entered in favor of the Commonwealth against Robert A. Winney, Social Security No. 123-32-9127, 430 Windtree Drive, Moneta, Virginia 24121-3106.

(2) The judgment shall bear interest at the judgment rate of interest fixed by law from this date, provided that interest will be waived if the judgment is paid in full on or before May 10, 1999, to the Clerk, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197.

(3) The Office of General Counsel and the Commission Comptroller are directed to take all measures provided by law to collect this judgment, including, but not limited to, recording the judgment; pursuing remedies provided by the Virginia Debt Collection Act, §§ 2.1-726 through 2.1-735 of the Code of Virginia; and making claim to any state income tax refund as provided by the Setoff Debt Collection Act, §§ 58.1-520 through 58.1-535 of the Code of Virginia.

(4) Insofar as is practicable, the Office of General Counsel shall mail a copy of this order to every customer of the Waterworks Company of Franklin County.

(5) This case be dismissed from the Commission's docket.